

TUESDAY, AUGUST 1, 2023

PERSPECTIVE

# May we approach the bench?

By David C. Casarrubias, Thomas Rivera, Bianca A. Velez, Brenda C. Quintanilla and B. Cynthia Loyola

“Your Honor, may I approach?” California Latinx lawyers say these words often in California’s courts, but almost never to a Judge who reflects their own background. This has to change. Six U.S. Supreme Court Justices can scoff at the need for “meaningful representation,” but as Justice Patricia Guerrero (the sole Latina on the California Supreme Court) said, it matters whether we can see some of ourselves in the members of our courts

A large majority of California courts do not reflect the Latinx communities they serve. Forty

percent of California’s population is Latinx, yet there has only ever been one Latinx Justice on the California Supreme Court at a time - if at all. Our intermediate courts do not fare any better. According to the most recent data, there are just eight Latinx Justices throughout all six districts of the California Courts of Appeal, representing 7.9% of the Justices on the appellate bench. In the trial courts, even in the counties with the highest Latinx populations like Los Angeles, just 16% of Judges are Latinx. In Orange County 8.8% are Latinx, and in San Diego only 14% are Latinx. The San Francisco Superior Court has made some strides, but there is room for improvement. Latinx Judges account for about 14% of the Court, while 15.9% of the City and County’s population identifies as Latinx. Right now in

California - a state that prides itself on diversity - about 211 Latinx Judges and Justices are asked to represent a community of nearly 16,000,000 Latinx Californians. The lack of representation is discouraging and self-perpetuating - after all, if the Latinx community doesn’t see itself on the bench, why would we think our voices are welcome there?

Although there is more Latinx representation on the bench, the wooden ceiling does not stop there. Latinx Judges have historically been assigned to traffic, family, or criminal departments. These assignments are no doubt important, but they often hide the talents and capabilities of Latinx Judges. Indeed, now-Chief Justice Guerrero was assigned to (and later presided over) the Family Law Division of the San Diego Superior Court before her elevation to the Court of

Appeal in 2017. In San Francisco specifically, a review of historical assignments in the San Francisco Superior Court shows that there has not been a single Latinx Judge presiding over the Law & Motion or Civil Complex departments in the past ten years. The underrepresentation of Latinx Judges in the Civil Law & Motion and Civil Complex in San Francisco - and civil departments statewide - fails the Latinx community.

The discrepancy in judicial assignments elude Latinx Judges and further perpetuate the wooden ceiling many Latinx legal professionals are trying to break. For Latinx lawyers who appear in departments without diverse Judges, the lack of representation results in indignities and microaggressions, ranging from having their names constantly (and dismissively)

David C. Casarrubias, Thomas Rivera and Bianca A. Velez are associates, and Brenda C. Quintanilla and B. Cynthia Loyola were 2023 summer associates at Hanson Bridgett LLP.



mispronounced, to being confused as wandering jurors, court reporters, or even the Spanish-language translator!

So what can be done? For one, we must acknowledge that race and ethnicity have been systematic barriers to our justice system—“Equality requires acknowledgment of inequality.” 143 S. Ct. at 2200 (Sotomayor, J., dissenting). Now more than ever, California courts must champion diversity. Presiding Judges across the state must be transparent in the process of judicial appointments and assignments, and acknowledge that our judiciary has room for growth.

Latinx Judges should be empowered to contribute their intellect and talents to all kinds of cases. In turn, this will elevate Latinx representation throughout our court system and enhance California’s application of justice for all.

Presiding Judges in California’s courts have the discretion to promote diversity on the bench. For example, the Presiding Judge in San Francisco Superior Court just recently leveraged her authority to re-assign Judge Daniel Flores to preside over Civil and Criminal Trials after starting in the Family Law Division. Presiding Judges should go even further and implement

local rules that are equitable, transparent, and consistent for how Judges are assigned. They can implement mandatory rotations to ensure Latinx Judges are not pigeon-holed in stereotypical assignments, and they can actively promote diversity on the bench and the law by assigning Latinx Judges to preside over more complex and prominent cases. The success of these local rules and practices may later serve as evidence for the Legislature to amend the Government Code section governing judicial assignments.

It is not up for debate that the small but mighty number of Latinx

Judges have earned their seats on the bench. They, and the community they represent, deserve equitable assignments and proper representation.

We call on the Presiding Judges throughout California - including San Francisco - to leverage their positions to empower Latinx Judges to showcase their talents and contributions in assignments that are often elusive, including Civil Law & Motion and Civil Complex. Just as the majority of our colleagues have seen themselves reflected in these assignments, it is time the Latinx community enjoys the same feelings of belonging.